IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.346/2004

Decided on.23.4.2007

State of H.P. and another. **…Petitioners.**

Versus

Kam Raj and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes.*

For the petitioner : **Mr.M.S. Chandel, Advocate General with Mr. M.A. Khan and Meenakashi Sharma, Dy. Advocate Generals.**

For the respondents **Mr. Ramakant Sharma, Advocate.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the respondents had filed petition under section 28-A of the Land Acquisition Act, 1894 for re-determination of enhanced compensation on the analogy of award announced by the learned District Judge, Solan on 5.1.1998. The Land Acquisition Collector held the respondents entitled for the enhanced compensation as under:

I.

i)	Total award as per revised rates	= Rs. 8,83,158.00 (-)=Rs.60,214.93 (original) = Rs.8,22,943.07
ii)	30% Solatium	Rs. 2,46,882.92
iii)	12% Additional Compensation w.e.f. 30.6.90 to 31.7.93	Rs.3,05,187.07

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

iv)	9% interest w.e.f. 1.8.93 to 31.7.94	Rs. 74,064.88
v)	15% interest w.e.f. 1.8.94 to 30.6.98	Rs. 4,83,619.97

	Total:-	Rs. 19,32,698.71 or say Rs. 19,32,699.00

The Land Acquisition Collector, HPPWD, South Zone, Winter Field, Shimla had sent a notice to the Director Department of Tourism and Civil Aviation and the Executive Engineer, Shimla Division No.2 HPPWD, Shimla directing them to arrange for deposit of the amount of Rs. 7,94,385.00 with up to date interest. The Joint Director Tourism and Civil Aviation had submitted reply to the notice on 30.1.2003.

The learned Advocate General had submitted that the petitioner preferred by the respondents under section 28-A of the Land Acquisition Act, 1894 was barred by limitation.

Mr. Ramakant Sharma, Advocate appearing on behalf of the respondents had argued that the petitioner under section 28-A of the Act was within time and he further submitted that the award was made by the Collector Land Acquisition on 28.11.2000 and this petition has been filed on 20th May, 2004 and the same suffers from delay and laches.

I have heard the parties and perused the record.

The award has been made by the Land Acquisition Collector on 28.11.2000 and this petition has been filed on 20th May, 2004. There is inordinate delay in filing the writ petition. The petitioners have not assigned any cogent reasons for approaching this Court after a period of more than three years after the passing of award on 28.11.2000. The only explanation put forth by the petitioners is that they were not aware of the award passed on 28.11.2000. The Superintending Engineer, 4th Circle,

HPPWD, Shimla filed the reply to the petition under Section 28 A on 7.4.1999 and thereafter the rejoinder was filed by the respondents on 7th May, 1999. The parties were heard by the learned District Judge. The Land Acquisition Collector, HPPWD, South Zone, Winter Filed, Shimla had also sent notice to the Director Department of Tourism and Civil Aviation on 13.12.20002 and thereafter the reply was also filed to the notice by the Joint Director Tourism and Civil Aviation on 30.1.2003. Thus, it can safely be presumed that the petitioners were aware of the award dated 28.11.2000 and the plea that they were not aware of the passing of the award is untenable.

The limitation of three months has been prescribed for filing an application for re-determination of compensation. The learned District Judge, Solan has passed the award in reference case No. 17-7/96 on 5.1.1998. The respondents have filed an application for getting certified copy of the judgment on 1st April, 1998 and the same was supplied to them on 30.4.1998 and thereafter the reference was filed on 2nd May, 1998. If the period of obtaining the copy is excluded then the respondents could file the petition up to 5.5.1998. Accordingly the petition preferred by the respondents under Section 28-A was within limitation after excluding the period with effect from 1st April, 1998.

The Hon'ble Supreme Court has held in ***State of A.P. and another Vs. Marri Venkaiah and others*** 2003 (7) SCC 280 that an application under section 28-A of the Land Acquisition Act, 1894 is to be filed within three months from the date of award by the court by excluding the time for obtaining the requisite for obtaining the copy. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"Plain language of the aforesaid section would only mean that the period of limitation is three months from the date of the award of the court. It is also provided that in computing the**

period of three months, they day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application under Section 28-A is to be filed within three months from the date of the award by the court by only excluding the time re3quisite for obtaining the copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant."

This court has held in ***BBMB Vs. Ram Lal and others*** CWP No. 381 of 2003 decided on 14.5.2007 that there should not be any inordinate delay in filing the petition challenging the award under various provisions of the Land Acquisition Act, 1894.

Accordingly there is no merit in this writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

23.4.2007
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